



February 18, 2003

HOUSE BILL No. 1797

DIGEST OF HB 1797 (Updated February 12, 2003 7:24 PM - DI 92)

Citations Affected: IC 15-4.

Synopsis: Seed arbitration council. States the duties and powers of the Indiana seed arbitration council. Increases filing fees for arbitration by the council. Requires parties to an arbitration to share equally the council's investigation costs. Requires the council to maintain trade secrets and other proprietary information as confidential. Provides other procedures under which the council conducts arbitration. Authorizes the state seed commissioner to adopt administrative rules to supplement the arbitration procedures and to describe the conditions and circumstances under which arbitration is applicable. Repeals a seed arbitration council statute that is superseded by the new procedures.

Effective: July 1, 2003.

Chowning, Friend, Gutwein

January 21, 2003, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.
February 17, 2003, reported — Do Pass.

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February 18, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1797

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 15-4-11-8.3 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]: **Sec. 8.3. The council shall do the following:**

4 (1) **Assist buyers and sellers in determining the validity of**
5 **complaints between the buyer and the seller.**

6 (2) **Recommend cost damages resulting from the failure of**
7 **seed to perform or produce properly, whether related to:**

8 (A) **specific representations on the label;**

9 (B) **other information on the seed container; or**

10 (C) **conditions attributed to the quality of the seed.**

11 SECTION 2. IC 15-4-11-8.5 IS ADDED TO THE INDIANA CODE
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2003]: **Sec. 8.5. The council may do the following:**

14 (1) **Examine all nonprivileged records of the buyer and the**
15 **seller that the council considers relevant to a complaint filed**
16 **under this chapter.**

17 (2) **Investigate and conduct tests the council considers**

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necessary to determine the validity of the complaint. The council may enter into contracts with qualified persons to perform investigations and tests under this subdivision.

(3) Hold hearings at the times and places designated by the chairman to perform the functions described in section 8.3 of this chapter. Written notice of a hearing must be given to the buyer and the seller not later than twenty (20) days before the hearing. Each party must be given an opportunity to present its position at a hearing.

(4) Negotiate and recommend to the buyer and the seller conditions for settlement of a complaint.

(5) Hold hearings to present:

(A) the results of the investigations of a complaint; and

(B) the recommendations to the buyer and the seller for settlement of the complaint.

(6) Enter the property of the buyer or the seller to obtain information and perform investigations under this chapter.

(7) Compel either or both of the following by subpoena:

(A) The attendance and testimony of witnesses.

(B) The production of documents.

If the council issues a subpoena, the circuit or superior court of the county where a subpoena is to be served shall enforce the subpoena.

SECTION 3. IC 15-4-11-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) As a condition precedent to maintaining a civil action against a seller for failure of the agricultural or vegetable seeds to produce or perform:

(1) as represented by the label required to be attached to those seeds or furnished under IC 15-4-1-4 or IC 15-4-1-5;

(2) as represented by warranty; or

(3) because of negligence;

the buyer must submit the claim to arbitration.

(b) Any applicable period of limitation with respect to a claim subject to this chapter is tolled until ~~ten (10)~~ **twenty (20)** days after the filing of the report of arbitration with the commissioner.

SECTION 4. IC 15-4-11-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) As a condition precedent to asserting a counterclaim or a defense in an action brought by a seller against a buyer, the counterclaim or defense must be submitted to arbitration.

(b) Upon the buyer's filing of a written notice of intention to assert a claim as a counterclaim or defense, accompanied by a copy of the

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1 buyer's complaint in arbitration filed under section 15 of this chapter,
 2 the action brought by the seller shall be stayed and any applicable
 3 statute of limitations is tolled with respect to the claim until ~~ten (10)~~
 4 **twenty (20)** days after filing of the report of arbitration with the
 5 commissioner.

6 SECTION 5. IC 15-4-11-14 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. **(a)** A buyer shall
 8 invoke arbitration under this chapter by filing a sworn complaint with
 9 the commissioner together with a filing fee of ~~ten one hundred~~ dollars
 10 **(~~\$10~~-\$100)**. The buyer shall serve a copy of the complaint upon the
 11 seller by certified mail.

12 **(b)** Except in case of seed that has not been planted, the claim shall
 13 be filed within ~~such a reasonable~~ time **after the alleged defect or**
 14 **violation becomes apparent so** as to permit effective inspection of:

15 **(1) the crops or plants under field conditions; or**

16 **(2) the grain harvested from the crops or plants.**

17 **(c) Notwithstanding subsection (b), a claim must be filed not**
 18 **later than ninety (90) days after completion of the harvest.**

19 SECTION 6. IC 15-4-11-15 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. ~~Within five (5)~~ **(a)**
 21 **Not later than twenty (20)** days after receipt of a copy of the
 22 complaint, the seller shall file with the commissioner an answer to the
 23 complaint and serve a copy of the answer upon the buyer by certified
 24 mail.

25 **(b) The seller shall pay a filing fee of one hundred dollars (\$100)**
 26 **to the commissioner when the seller files the answer to the**
 27 **complaint under subsection (a).**

28 SECTION 7. IC 15-4-11-15.5 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2003]: Sec. 15.5. **(a) Before beginning a**
 31 **complaint investigation, the commissioner shall prepare and**
 32 **provide to the parties an estimate of the costs to be incurred during**
 33 **the investigation of the complaint.**

34 **(b) Before a complaint investigation begins, the buyer and the**
 35 **seller shall each pay to the commissioner an amount equal to fifty**
 36 **percent (50%) of the costs estimated by the commissioner under**
 37 **subsection (a). The money required to be paid under this**
 38 **subsection is in addition to the filing fee required by sections 14**
 39 **and 15 of this chapter.**

40 **(c) The commissioner shall deposit the money paid under**
 41 **subsection (b) in a separate account. The costs of the investigation**
 42 **shall be paid from money in the account.**



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(d) If the actual costs of the investigation are greater than the costs estimated under subsection (a), the buyer and the seller shall each pay fifty percent (50%) of the difference between the actual costs and the costs estimated under subsection (a).

(e) If the actual costs of the investigation are less than the costs estimated under subsection (a), the commissioner shall refund to the buyer and the seller each fifty percent (50%) of the difference between the actual costs and the costs estimated under subsection (a).

SECTION 8. IC 15-4-11-17.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 17.5. If the council determines that a hearing should be conducted for the parties to present their respective positions, a party may have attorneys present with whom the party may confer, but an attorney for a party may not participate directly in the proceedings unless requested to do so by the chairman.**

SECTION 9. IC 15-4-11-20.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 20.5. The council shall ensure that all trade secrets and other information of a proprietary nature collected during the course of an investigation under this chapter be kept confidential to the degree necessary to ensure the property rights of the seller and the civil rights of the buyer.**

SECTION 10. IC 15-4-11-22.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 22.5. The buyer and seller shall each give written notice to the commissioner of the acceptance or rejection of the council's recommended terms of settlement not later than thirty (30) days after the date of the council's recommendation.**

SECTION 11. IC 15-4-11-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 24. The commissioner may adopt rules under IC 4-22-2 to do the following:**

(1) Describe the conditions and circumstances relating to seed to which arbitration under this chapter is applicable.

(2) Supplement the procedures of the arbitration process set forth in this chapter.

SECTION 12. IC 15-4-11-19 IS REPEALED [EFFECTIVE JULY 1, 2003].



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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1797, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BISCHOFF, Chair

Committee Vote: yeas 12, nays 1.

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